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AUTHOR Coulson, Robert
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ABSTRACT

Growing problems in education demand practical systems for the peaceful resolution of grievances without hindering the educational process. The American Arbitration Association (AAA), a private nonprofit organization, can provide effective methods for the solution of many different types of disputes. It can administer representation elections for national and local organizations and provide arbitrators to help determine election ground rules. Members of AAA's National Panel of Arbitrators are also available to serve as fact finders or arbitrators in collective bargaining disputes. AAA experts often conduct training programs in arbitration and negotiating advocacy to instruct potential negotiators in the techniques necessary for effective bargaining. Training programs for student ombudsmen have also been developed. AAA officers and staff members are available to appear at conferences conducted by other groups throughout the country, and a variety of films and pamphlets are available for distribution. The AAA serves as a general educational and informational service on all aspects of the dispute-settling problem in education. (Author/JG)

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AMERICAN ARBITRATION ASSOCIATION
140 WEST 51 STREET, NEW YORK, N. Y. 10020 (212) 977-2000

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Remarks by Robert Coulson, President
American Arbitration Association
at the National Convention of the
National Association of Elementary School Principals
Atlantic City, New Jersey - April 26, 1976

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RESOLVING CONTROVERSY IN EDUCATION

Education is beset by controversies to a greater extent than ever before.

Faculty and teacher organizations are pressing for recognition, for higher salaries, for improved conditions of work, and for a greater voice in determining educational policy. School administrators and boards of education may sympathize with these economic goals and with professional aspirations. But budgets are often not large enough to accommodate to them. This is one of the underlying reasons for controversy.

In addition, disputes involving students, parents and the community are always a possibility in school systems in many areas, sometimes resulting from efforts to integrate the schools.

In the case of faculty, it is often necessary at the outset, to determine the organization's right to represent the teachers. This may involve a representation election, often between contesting organizations. Important public policy considerations

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are frequently involved.

In the case of students vying for a voice, an election may be the answer.

After representation rights are determined, an agreement must be negotiated. Here, a host of new problems must be dealt with. Not the least of them is the development of practical systems for the peaceful resolution of grievances arising out of the application or day-to-day performance of these contracts. This is particularly important in schools, where such disputes must be resolved without undue interference with the educational process itself, the primary concern of all.

Against this background, the American Arbitration Association has been called upon with increasing frequency to assist parties in finding mutually acceptable solutions.

The American Arbitration Association is a private, nonprofit organization in the public service which administers tens of thousands of arbitration cases each year. The AAA does not act as an arbitrator. Rather, it helps the parties select an appropriate, impartial arbitrator and provides administrative services. Also, it serves as a center of information,

education and research on arbitration, negotiation, mediation, and fact-finding. The AAA publishes a wide variety of reporting services, including a monthly summary of arbitration awards Arbitration in the Schools.

ELECTION SERVICES

The Election Department of the AAA provides the impartial administration of representation elections. This task is particularly critical because the agencies of government - the National Labor Relations Board or state labor relations boards - which are available to employees in private industry and service industries sometimes lack jurisdiction over employees of boards of education. A few states have established specialized agencies to handle such elections.

Local branches of the National Education Association and the American Federation of Teachers, AFL-CIO, frequently competing for the right to represent teachers. When only one organization seeks this right in a particular school district the problem is to determine whether the organization has the support of a majority of the teachers and whether the board of education is willing, or can be required under state law, to grant representation rights. When two such organizations are competing, difficulties multiply, for the local organizations of the NEA or of the AFT may not agree initially as to who may vote or when or how

the election shall be held. Then, an impartial agency may be asked to provide an arbitrator to determine the election ground rules, and administer the election itself.

The Association has conducted hundreds of such elections under its Representation Election Rules. Occasionally, the AAA has also conducted elections for student groups in order to determine the degree of student support for or against a particular group or policy. From its vantage point as an impartial organization with decades of experience in such matters, and with access to special panels of election arbitrators the AAA has been able to perform a unique and indispensable service.

COLLECTIVE BARGAINING IN THE SCHOOLS

Serious disputes between teacher organizations and school boards occur in the negotiation process, where the parties are seeking agreement as to the terms and conditions of their collective bargaining contract. These agreements or understandings may be quite complex, covering a wide variety of policies and practices in the relationship between teachers and school administrators. Included in such agreements are salary schedules, fringe benefits, rights of teachers as individuals and as a group, and conditions of work in general. Bargaining as to changes in such matters is often undertaken in a crisis atmosphere, often under fiscal and political pressure. Quite frequently, the

parties need the help of an impartial expert in reaching agreement.

Members of the National Panel of Arbitrators of the AAA can be made available as mediators, fact-finders or arbitrators. These men and women are highly skilled in the complex process of collective negotiation and dispute resolution.

The Association consults with the parties and assists in the appointment of mediators from its panels, when necessary. It also appoints fact-finders who may make recommendations to the parties. In some cases, the AAA is called upon to provide lists from which arbitrators can be appointed to render a final and binding decision as to some or all of the contested bargaining issues still lying between the parties. These determinations may also be rendered on an advisory basis if the parties so desire.

During the past dozen years, teacher organizations have brought many local school boards to the bargaining table.

The bargaining process has paid off for many teachers as it has for many other public employees.

Elected officials and their professional representatives learn to operate within collective bargaining. At the outset,

they may resist unionization. But after a few rounds of bargaining, they seem to submit to the process. In fact, they learn to defend it.

Criticism of the process comes mostly from "outsiders". A recent report from the Institute for Responsive Education in Boston entitled, "The Community at the Bargaining Table," was published by some researchers who wondered whether the traditional labor-management approach, when applied to public education, was wholly in the public interest. The study was based on interviews with community leaders, school administrators, board members and other participants in the collective bargaining process. The report concluded that collective bargaining does not afford a full measure of community representation.

Bargaining emphasizes only those issues placed on the table by the parties. Educational issues which require more leisurely and thoughtful consideration tend to be swept to one side.

The IRE report describes some experimental attempts to involve community leaders in the collective bargaining process, but indicates some skepticism as to their potential. Seymour B. Sarason, director of the study, concludes that this points-up a major inadequacy in educational governance. Although all community service systems interact with each other, their respective "modes

of governance and decision making do not facilitate effective and productive conflict resolution."

School board bargaining highlights this aspect of the American dilemma. The paramount demands of public teachers have brought forth an energetic thrust towards educational unions. A short step then to the negotiating table. Through this linkage, the bargaining relationship has locked school boards and unions together, to the exclusion of other public interests. Principals, teachers and school board members may have become captives within the paper confines of their contract.

What happens in public schools determines the availability of services provided by other agencies: employment, health, recreation, welfare and criminal justice. In the same way, these programs affect the service priorities of the schools. As each institution builds its own fences, it becomes difficult for the people to interrelate across institutional borders.

In "Public Work, Public Workers," Ralph J. Flynn, a well-known official of teacher organizations, calls for a new kind of partnership between school boards and employee organizations. In addition to adversary bargaining, he envisions the creation of a second relationship, a problem-solving partnership. He

believes that such an arrangement could operate internally to solve problems not dealt with in collective bargaining. He would hope that school boards and teachers could combine to improve the operation of the schools.

> "Boards and teachers - employers and employees - could combine either to resist the onslaughts of parochialism, if that is the way they see their problem, as some have, or for instance, to create a series of alternative schools that approach cultural pluralism in a different way."

Not everyone would agree that the public interest should rely primarily upon the collective bargaining process. Some would prefer to experiment with community participation. Examples of such an approach are suggestions for providing pre-bargaining briefing sessions for the community, for placing parents at the bargaining table, for opening up negotiations to the public, or for submitting settlements to subsequent ratification by parents and taxpayers. Some such experimentation is already taking place.

Many people are trying to figure out how collective bargaining can be made more compatible with the dual public need for quality education and for integration of the educational process into the mainstream of community life. Sociologists tell us that youth should be enabled to participate more actively in adult systems established to

serve them, and which they will inherit. In 1973, the President's Science Advisory Committee recommended that high school youth be encouraged to spend part of their academic year working in the community. One way to involve student leaders in adult life might be to expose them to the collective bargaining process. But would this be practical?

GRIEVANCE ARBITRATION

In contracts negotiated for teachers, as in agreements governing other types of employees, provision is made for a grievance procedure with arbitration as the terminal point.

In some school systems, for instance, where the grievance arbitration clauses call for administration by the American Arbitration Association, such questions as these were raised

> Are substitute teachers entitled to be paid during periods of illness, on the same basis as are regular teachers?
>
> Was it discriminatory to give a teacher an "unsatisfactory" rating and transfer her to another school?
>
> Was it a violation of the agreement to assign a teacher to certain non-teaching tasks?
>
> Were teachers, who were assigned to other duties during regularly scheduled preparation periods, entitled to receive extra pay for the lost preparation time?
>
> Was a principal acting within his rights when he transferred an athletic coaching assignment from one teacher to another?

EDUCATION IN DISPUTE SETTLEMENT

The beginning of a bargaining relationship is sometimes marked by misunderstandings which create distrust and grievances which severly tax the skills of the parties to solve. The role of AAA is all the more important, therefore, in making available to school administrators, faculty, and teacher representatives knowledge of techniques which, in the past, they may not have needed.

This knowledge is imparted not only in small meetings with persons engaged in the practical task of drafting new contracts, but in seminar discussions and larger conferences with policy-making officials and teacher organization representatives who want to prepare themselves for the new roles they must play.

During the past few years, the AAA has participated in many such programs by tailoring and presenting complete training programs in arbitration and negotiating advocacy, and by providing speakers, films or publications to various programs.

EXPERIMENTATION IN DISPUTE MANAGEMENT

Collective bargaining is one of a battery of voluntary processes for resolving conflict; but other systems may be more appropriate for nulti-party problems. Participative consensus techniques may often be more effective for resolving community disputes than bipartisan bargaining. The adversary process works well when two parties have identified the boundaries of their

respective demands. Traditional collective bargaining focuses upon improvements in wages, working conditions and benefits, but rarely concerns extraneous social issues. Innumerable issues revolving around the operation of public schools, hospitals or other service institutions do not rest primarily upon the employment relationship. These issues might much better be handled in a problem-solving forum to which all interested groups would be invited for a general clarification of the facts and a marshaling of their respective arguments.

It may well be that three-dimensional bargaining and consensus mediation will be the forerunners of a proliferating breed of conflict resolution systems, demanded by the complexity of American society. The impact of collective bargaining upon the public schools and upon other service agencies in the community will highlight the need for such systems.

A division of the American Arbitration Association is the Community Dispute Services. Its purpose, as its name indicates, is to offer new means and methods for settling disputes, including those arising in the community. The key to CDS operations is to bring a new dimension to the principles of mediation, arbitration, fact-finding and conciliation, techniques that have proven so successful elsewhere.

The services of CDS may occasionally be applicable to those disputes that arise between school administrators, teachers and various factions in the community. CDS mediators have also been active in resolving confrontation situations involving students and administrators.

CDS is uniquely equipped to handle the growing number of multi-lateral disputes stemming from the increasing insistence of various community groups for involvement in employment and related problems affecting their communities, but which cut across some of the more traditional areas of labor-management concern.

SOMMART

For information about the various services of the AAA parties may contact the Regional Director of their most convenient AAA office. For complex problems, parties may wish to talk directly to some of the more specialized departments of the AAA.

The Election Department, located at AAA headquarters in New York City, provides assistance in planning elections. Representatives of the department supervise the administration of the larger, more complex elections, even where they are held outside of the New York area.

Requests for more information about the community dispute services may be made to the CDS offices in New York City.

of AAA

The Department of Education and Training conducts seminars and conferences on resolution of disputes in the field of public education, with particular emphasis upon collective bargaining, grievance and arbitration systems. AAA officers and staff members can be made available to appear at ~~many~~ conferences conducted by organizations throughout the country. The AAA serves as a general educational and informational service on all aspects of the dispute-settling problem in public education. Films and pamphlets are available for distribution through AAA's Publications Department.

All departments of the Association have available to them the experienced, impartial experts enrolled in the Association's National Panel of Arbitrators. This National Panel consists of 30,000 and includes specialists on labor-management controversies and other relevant areas.